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Technical assistance and capacity-building

Situation of human rights and the activities of the United Nations Joint Human Rights Office in the Democratic Republic of the Congo

Report of the United Nations High Commissioner for Human Rights

Summary

In the present report, submitted pursuant to Human Rights Council resolution 30/26, the United Nations High Commissioner for Human Rights reports on the human rights situation and the activities of the United Nations Joint Human Rights Office in the Democratic Republic of the Congo from June 2015 to May 2016. The report assesses the progress made by the Government in implementing the previous recommendations made by the United Nations High Commissioner for Human Rights and other United Nations human rights mechanisms.

The High Commissioner welcomes the improvements made in the legislative framework for human rights protection, including through the incorporation of the provisions of the Rome Statute and the ratification of the Convention on the Rights of Persons with Disabilities. The High Commissioner welcomes the fact that the members of the National Human Rights Commission have taken office and that progress has been made in combating impunity.

Nevertheless, the human rights situation remains of great concern throughout the country. The United Nations Joint Human Rights Office has observed that the highest number of human rights violations and abuses continues to occur in the east, committed by members of over 30 armed groups as well as by soldiers of the Armed Forces of the

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Democratic Republic of the Congo (Forces armees de la Republique democratique du Congo — FARDC). The Office has also observed a growing incidence of human rights abuses in the western provinces, including in Kinshasa. These consist of serious violations of fundamental freedoms committed by members of the police force, the National Intelligence Agency and other government officials, mainly targeting political opponents, human rights defenders and protesters, and attests to a deplorable narrowing of the democratic space. Such developments are particularly worrisome and could undermine the credibility of the political dialogue and the electoral process.

The High Commissioner encourages the Government to implement all the recommendations made in the present report and reaffirms the willingness of his Office to support the authorities' efforts to protect and promote human rights.

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I. Introduction

1. Pursuant to Human Rights Council resolution 30/26 of 2 October 2015 on technical assistance and capacity-building for human rights in the Democratic Republic of the Congo, the present report provides an overview of the situation of human rights and the activities carried out in the country by the Office of the United Nations High Commissioner for Human Rights (OHCHR), through the United Nations Joint Human Rights Office, between June 2015 and May 2016.

2. The present report highlights the main human rights developments and assesses the progress made in implementing the recommendations of OHCHR and the United Nations human rights mechanisms.

II. Main human rights developments

3. During the reporting period, considerable progress was observed, particularly at the legislative and institutional levels. On 2 January 2016, the President of the Republic promulgated legislation on the implementation of the Rome Statute and, on 28 September 2015, the Democratic Republic of the Congo ratified the Convention on the Rights of Persons with Disabilities. The High Commissioner welcomes the fact that the members of the National Human Rights Commission took office on 23 July 2015. He also notes some progress in the fight against impunity, including the conviction of a senior superintendent of the Congolese national police (PNC) for acts constituting crimes against humanity committed by personnel under his command.

4. The human rights situation remains of serious concern throughout the country, however. The east — particularly the conflict-affected areas — remains marked by the greatest number of human rights violations and abuses, principally committed by members of more than 30 armed groups, but also by soldiers of the Forces armées de la République démocratique du Congo (FARDC) in military operations against these groups.

5. In the western provinces, steadily growing restrictions on the political space have been observed throughout the reporting period, including offences against freedom of expression, opinion, association and peaceful assembly, mainly in provinces where opposition parties and civil society are particularly active. PNC members and FARDC soldiers have applied excessive force and have resorted to the use of lethal weapons during the suppression of demonstrations and other gatherings. Arbitrary arrest and detention, incommunicado detention of protesters and political opponents, including persons who had announced their candidatures for the upcoming presidential election and of human rights defenders, journalists and other civil society representatives, are also cause for concern.

A. Fundamental freedoms and protection of human rights defenders, journalists and political opponents

6. The Human Rights Committee recommended that the Government guarantee freedom of speech and of the press and other media, in conformity with article 19 (3) of the International Covenant on Civil and Political Rights,[1] and that any restriction on press and media activities be strictly compatible with the Covenant. The Committee requested the Government to ensure that the freedoms of expression and peaceful assembly are respected

[1] CCPR/C/COD/CO/3, para. 22.

and that members of political parties, journalists and human rights defenders are able to carry out their activities freely, in conformity with international standards. At the thirty-first session of the Human Rights Council, the Special Rapporteur on the situation of human rights defenders and other rapporteurs regretted the lack of cooperation by the authorities, which had responded to only one of their communications.

I. Current situation and action taken by the Government

7. During the reporting period, State actors were responsible for a great many violations of fundamental freedoms. The United Nations Joint Human Rights Office documented 553 human rights violations related to the restriction of democratic activities nationwide between June 2015 and May 2016, mainly in provinces where opposition parties and civil society actors are particularly active, and in the towns of Kinshasa, Lubumbashi, Kalemie, Bukavu and Goma.

8. The most frequently documented violations concerned the right to liberty and security of the person and the freedoms of peaceful assembly, expression and opinion. The victims were mainly members of opposition political parties (482 victims) and representatives of civil society (200 victims). Those who are alleged to have committed the violations recorded are mainly members of PNC and of the National Intelligence Agency (ANR).

9. In the pre-electoral context, restrictions on civil liberties, threats and intimidation against members of political parties and civil society and journalists, arbitrary arrests and detentions and executive interference in the administration of justice are particularly worrying developments. This trend, notably increasing since January 2015, is likely to affect the credibility of the electoral process, particularly as, to the knowledge of the Office, only one agent of the State has been investigated or prosecuted for acts constituting such violations.

10. On 14 December 2015, Parliament adopted a law establishing modalities for ensuring the freedom to demonstrate, subject to prior notice, in accordance with the Constitution and international law. However, the Office of the President has returned the text to Parliament for review.

11. Since then, general prohibitions on demonstrations were enacted by local authorities, for example in Kalemie, Lubumbashi and Bandundu, in violation of the principles of necessity and proportionality. The Office has observed that different principles are applied by the local authorities and security forces, depending on the political affiliation of the organizers. In fact, demonstrations by the opposition and civil society are in most cases prohibited, while those of the presidential majority are generally permitted.

12. By way of example, at least 12 events planned by opposition groups and civil society in several cities throughout the country on 26 May 2016 have been banned by the administrative authorities concerned, although prior notice of these events was given. Their purpose was to call for the organization of elections within the constitutional time frame and to condemn recurrent massacres in Beni, North Kivu province. They followed a ruling by the Constitutional Court on 11 May 2016, interpreted by many as authorizing the current President to remain in power beyond the end of his term, until a new President may take office.

A/HRC/27/5, para. 134-134.

According to the Constitution, presidential and legislative elections must be held before the end of 2016.

13. During the demonstrations of 26 May, the Office documented 77 human rights violations nationwide. In four cities, demonstrations were held without incident, with good police oversight, but in 16 other cities, the local administrative authorities and/or the Congolese national police impeded or violently dispersed the demonstrations (the majority of which had been banned). Two people were shot dead by agents of the national police force and 18 persons were injured in these events, and 101 persons were arrested between 23 and 26 May 2016 in connection with the demonstrations. Nine of them were still being detained when this report was drafted in June 2016. Moreover, at least two staff members of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) were threatened by members of the National Intelligence Agency while they were observing the events in the course of their work.

14. Persons who had declared their candidacy for the presidential election were subjected to intimidation. For example, on 14 February 2016, members of FARDC and the National Intelligence Agency arrested national deputy Martin Fayulu, president of the opposition party Engagement pour la citoyennete et le developpement (Commitment to Citizenship and Development) at party headquarters in Kinshasa, then beat him when he resisted arbitrary arrest. He was detained for a few hours at military intelligence headquarters for distributing leaflets advocating a day of protest ("dead town") on 16 February.

15. In June 2016, 59 persons who had been arrested in connection with the exercise of their fundamental freedoms or for political reasons were still in detention, including in pretrial detention, in Lubumbashi, Goma and Kinshasa. The citizen's movement Lutte pour le changement (Struggle for Change) (LUCHA) was targeted in particular, with at least 15 members convicted by the courts for exercising their fundamental freedoms. In the case of Fred Bauma, arrested in Kinshasa on 15 March 2015 by PNC and ANR agents during a workshop organized by Platform Filimbi, his trial for participation in an insurrectional movement and endangering State security is ongoing. The Working Group on Arbitrary Detention adopted an opinion stating that the ongoing detention of Fred Bauma was arbitrary and that it began when he was exercising his freedom of expression and opinion.[7] The Working Group requested the Government to release him without delay and to remedy the serious material and non-material damage that he has suffered. Several special rapporteurs, including those on torture and other cruel, inhuman or degrading treatment or punishment and on the situation of human rights defenders, have expressed concern about this case and others submitted to them.

16. Little progress has been observed in strengthening the role of women in the electoral process. Positive initiatives to promote equality and parity include improvements in the legislative framework, such as an amendment to the Family Code aimed at abolishing all discriminatory provisions, as well as Act No. 15/013 of 1 August 2015 on the implementation of women's rights and equality, which stipulates, inter alia, that women must be represented in the political and administrative field, although it includes no quota or binding measures to ensure parity, as provided for in the Constitution. Women are still underrepresented in political positions, at both the national and municipal levels. For example, during the elections of governors and vice-governors of 21 new provinces in March 2016, only one woman was elected Governor, in the province of North Ubangi, and five were elected Vice-Governors, in the provinces of Tshuapa, Equateur, Haut Katanga, Haut Lomami and Lualaba.

[7] A/HRC/WGAD/2015/31, paras. 20 and 21.

Article 14 of the Constitution of the Democratic Republic of the Congo (February 2006) states: "Women have the right to equitable representation in national, provincial and local institutions. The State shall ensure parity between men and women in such institutions."

2. Action taken by the United Nations Joint Human Rights Office

17. The Office continued to monitor the cases of representatives of civil society who were arrested during demonstrations and meetings in Kinshasa.[7] The health of Christopher Ngoy Mutamba, president of the NGO Synergies Congo, culture et developpement (Congo, culture and development synergies), who was arrested on 21 January 2015 in Kinshasa and held incommunicado by the National Intelligence Agency until he was brought before the court on 10 February 2015, has deteriorated significantly. He is in pretrial detention in Kinshasa and his trial is still ongoing.

18. From June 2015 to May 2016, the Office organized or supported 60 training sessions on human rights topics pertaining to the electoral process throughout the country, benefiting over 4,132 participants, including representatives of civil society, political and administrative authorities, PNC officers, journalists and political stakeholders.

19. The Office has also provided legal support and targeted, multifaceted protection assistance and dealt with 115 cases of threats and human rights violations against 54 human rights defenders, 8 journalists and 53 other victims and witnesses of violations. The lack of a national legal protection framework can lead to serious violations, such as on 17 March 2016, in Bukavu, where a human rights defender who was the coordinator of the NGO Organisation populaire pour la paix was killed in his home by armed men wearing the uniform of the Congolese national police.

20. Although no significant progress has been made on the adoption of a bill on the protection of human rights defenders, the Office has been involved with the adoption in South Kivu province of an edict to protect human rights defenders and journalists, including through technical support to the steering committee on the edict and through awareness-raising efforts.

B. Arbitrary deprivation of the right to life

21. The Human Rights Committee has recommended that the Government should investigate any forced disappearance or arbitrary execution reported to it and prosecute and punish the perpetrators, advocating the granting of adequate compensation to the families of the victims.[8]

1. Current situation and action taken by the Government

22. The United Nations Joint Human Rights Office has documented the commission of extrajudicial killings and arbitrary deprivation of life by State agents, including in areas not affected by conflict. From June 2015 to May 2016, State agents were responsible for at least 41 violations of the right to life in the western part of the country, with 56 victims.

23. The majority of these extrajudicial executions and other violations of the right to life were committed by members of FARDC (53 per cent) and the Congolese national police (43 per cent) and involved the unjustified or disproportionate use of force or firearms. For example, on 17 April 2016, during a peaceful demonstration in Kolwezi, members of the Congolese national police and FARDC soldiers fired at the crowd with live ammunition, killing 6 people and injuring 22. Eight national police officers and three FARDC soldiers were arrested during the investigation of these incidents.

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[7] A/HRC/30/32.

[8] Edict No. 001/2016 of 10 February 2016 on the protection of human rights defenders and journalists in South Kivu province.

[9] CCPR/C/COD/CO/3, para. 15.

2. Action taken by the United Nations Joint Human Rights Office

24. The Office has continued its advocacy of inquiries into all human rights violations, particularly the cases of extrajudicial killings submitted monthly to the authorities concerned, so that the alleged perpetrators can be prosecuted and brought to trial. However, there has been no movement on several cases, including some involving the prosecution of police officers and members of the Republican Guard who, during the demonstrations in Kinshasa and Goma in January 2015, shot and killed at least 20 people.

C. Torture and other cruel, inhuman or degrading treatment

25. The Committee against Torture invited the Government to take effective measures to prevent any acts of torture throughout the country and called for steps to be taken to eliminate impunity for alleged acts of torture.[7] The Working Group on the Universal Periodic Review (UPR) recommended that the Government should establish, pursuant to article 3 of the Optional Protocol to the Convention against Torture and other cruel, inhuman or degrading treatment or punishment, an independent national mechanism for the prevention of torture that would be empowered to visit all places of detention. The Special Rapporteur on torture regretted the lack of response from the Government to the communications submitted to it and recalled that prolonged incommunicado detention may facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment.[8]

1. Current situation and action taken by the Government

26. During the reporting period, the Office identified 822 cases of torture and other cruel, inhuman or degrading treatment or punishment affecting 1,473 victims throughout the country. 57 per cent of the violations were committed by State agents and 43 per cent by armed groups.

27. Some victims were abducted by members of the security forces, including the National Intelligence Agency, and then held incommunicado: they were intimidated, beaten and deprived of food or sleep to force them to confess or to sign incriminating documents. Such was the case of Fred Bauma and Christopher Ngoy Mutamba, mentioned previously.

28. Members of armed groups have also subjected civilians to mutilation and cruel treatment during attacks on villages. For example, in Vututu (Irumu territory, Ituri province), during the night of 24 to 25 October 2015, a group of around 40 combatants of the Forces de résistance patriotique d'Ituri attacked two miners on whom they inflicted injuries to make them disclose the spot where they had hidden their gold.

29. The military courts have handed down convictions for cases of torture committed by members of the defence and security forces. For example, on 3 June 2016, the Uvira garrison military court found a FARDC commander guilty of torture, sentencing him to two years' imprisonment together with the payment of a fine, damages to the victim and court costs.

2. Action taken by the United Nations Joint Human Rights Office

30. The Office has continued to monitor and report to the authorities cases of torture and other cruel, inhuman or degrading treatment or punishment that have been documented throughout the country, particularly in places of detention. The practice by the intelligence

[7] CAT/C/DRC/CO/1, para. 6 (a) and (b).
[8] A/HRC/31/57/Add.1, para. 105.

services of incommunicado detention, including of political opponents or influential members of civil society, which has been observed on several occasions, is worrying.

31. In 2010, the Democratic Republic of the Congo ratified the Optional Protocol to the Convention against Torture, which requires the establishment of a national mechanism to prevent torture and other cruel, inhuman or degrading treatment or punishment. Nevertheless, the mechanism has not yet been set up.

32. Despite the legislative framework, which includes the 2011 Act on the criminalization of torture, the number of convictions for acts of torture remains low, particularly because of ignorance of the law within the judiciary and among the general public. Through its outreach efforts, the Office continues to support the dissemination of such legislation.

D. Sexual abuse

33. In 2014, during the universal periodic review of the Democratic Republic of the Congo, it was recommended that the Government should strictly enforce the 2006 law on sexual violence and its zero tolerance, prosecute all perpetrators of such abuses, regardless of their rank, and take appropriate measures to reduce and eradicate incidents of sexual and gender-based violence, including by improving the training of the security forces. The creation of mechanisms capable of preventing all forms of violence against women and of adequate remedies for victims was also recommended.

1. Current situation and action taken by the Government

34. Sexual violence remains a major concern in the Democratic Republic of the Congo because of social practices that perpetuate it and because it continues to be used as a weapon of war by parties to the conflict in the east. During the reporting period, the United Nations Joint Human Rights Office documented 635 victims of rape in conflict-affected provinces, including North Kivu, South Kivu and Ituri, 76 per cent of the victims had been raped by members of armed groups and nearly 24 per cent by State agents. Among the main perpetrators of rape are various factions of Raia Mutomboki, followed by members of the Forces de resistance patriotique de l'Ituri and the Forces democratiques de liberation du Rwanda.

35. Victims of sexual violence continue to endure lack of access to health and legal services and lack of redress and compensation. Comprehensive care (medical, psychological, legal and economic) is available only in some urban areas and their surroundings; elsewhere, it remains insufficient or inadequate. In remote areas where the judicial system is absent or poorly represented, amicable agreements — financial or other (including marriage) — are commonly employed to "close" cases, without the victim's rights being restored.

36. Nevertheless, some progress has been made in the fight against sexual violence, including conflict-related sexual violence. During the reporting period, the military justice system convicted at least 126 perpetrators of conflict-related sexual violence, including FARDC soldiers, national police officers and four ex-combatants of the Mouvement du 23 mars (M23), the sentences ranging from 1 to 20 years' imprisonment.

37. On 20 October 2015, the Office of the Personal Representative of the President on sexual violence and the recruitment and use of children launched a second campaign, called "Break the silence", in the provinces of North and South Kivu, in order to encourage

[1] A/HRC/27/5, paras. 134.60, 134.68, 134.71, 134.85 and 134.116.

victims and all citizens to denounce and combat sexual assault. In his speech on the state of the nation, on 14 December 2015, the President renewed his commitment to attain the "morally acceptable objective [of] zero rape" and emphasized the achievements of the military justice system in sentencing rapists, regardless of their rank or grade. The authorities [7] have also stressed the importance of creating a fund for compensation for victims, but little progress has been made in setting it up.

38. The legislative framework has been improved, including by the adoption, pursuant to article 14 of the Constitution, of Act No. 15/013 of 1 August 2015 on the implementation of women's rights and equality, the objectives of which include protection against violence against women in public and private life. The High Commissioner welcomes the adoption of the Act of 31 December 2015 amending and supplementing the decree of 6 August 1959 on the Code of Criminal Procedure, in particular with regard to the rights and protection of the accused, victims, witnesses and intermediaries.

2. Action taken by the United Nations Joint Human Rights Office

39. The Office has continued to support the work of NGOs to establish legal clinics in order to improve access to justice for victims. Twenty-three legal clinics have been set up in 13 provinces; they have provided free legal assistance to at least 921 victims of sexual violence, leading to 231 convictions. The Office has also provided legal assistance and/or appropriate protection to 72 victims of sexual violence perpetrated by members of the Congolese national police and/or FARDC.

40. Throughout the country, the Office has organized training on forensic expertise in cases of sexual violence for 132 physicians and on the treatment of such cases for 81 judicial police officers and 120 lawyers. With the support of the Team of Experts on the Rule of Law and Sexual Violence in Conflict (hereinafter the Team of Experts), the Office has facilitated the deployment of 19 women magistrates in special cells for the punishment of crimes of sexual and gender-based violence within the district prosecution offices in the provinces of Ituri, North and South Kivu and Tanganyika.

41. The Office has also assisted the military courts, in collaboration with the Team of Experts, in developing protective measures for victims of sexual violence and for witnesses. On 1 and 2 December 2015, a high-level conference organized in Kinshasa by the Team of Experts in collaboration with the United Nations Joint Human Rights Office brought together international and national experts (including 50 representatives of the judicial, executive and legislative powers) to discuss a legal framework to better protect victims.

E. Protection of civilians

42. The Human Rights Committee has urged the Government to take all necessary steps to strengthen its capacity to protect civilians in areas of armed conflict. [8] During the universal periodic review in 2014, the Government was also advised to take concrete steps to eliminate all negative forces operating in the eastern part of the country.

[7] Including the Office of the Personal Representative of the President on sexual violence and the recruitment and use of children, two commissions of the Senate and experts from the Ministry of Justice and Human Rights.

[8] CCPR/C/COD/CO/3, para. 13.

1. Current situation and action taken by the Government

43. In the eastern part of the country, civilians remain vulnerable to the continued armed conflict between the Congolese army and various armed groups. The parties to the conflict have been responsible for numerous violations committed by armed groups, including at least 328 summary executions, with 674 victims. Armed groups were identified by the United Nations Joint Human Rights Office as being responsible for 43 per cent of the violations and human rights abuses committed in the country (1,980 violations) during the period covered by the present report.

44. Gaps in the protection of civilians were particularly evident during two serious events that occurred in Lubero territory, North Kivu, in the context of ethnic conflicts between the Nande communities (supported by the Mai-Mai wing of Nduma Defence of Congo in a coalition with the Union des patriotes pour la defense des innocents) and the Hutu communities (supported by the Forces democratiques de liberation du Rwanda). Between January and February 2016, 22 civilians were killed and 15 people injured in these clashes, which have also led to abductions and the destruction of at least 982 houses in several villages.

45. Moreover, systematic attacks were launched by the Allied Democratic Forces, mainly in Beni territory in North Kivu, but also in Irumu territory in Ituri. During these attacks, at least 82 civilians were killed, 8 injured, and at least 17 abducted. In addition, two health centres and a pharmacy were looted and burned.

46. In both cases, FARDC soldiers also committed serious human rights violations, even though they had been deployed to protect populations and eradicate the armed groups. For example, on 7 January 2016, in the village of Miriki (North Kivu), at least one civilian was killed and three others were wounded by bullets by soldiers of the 2nd Battalion of the 3401st FARDC Regiment during peaceful demonstrations organized by the local population to protest abuses by armed groups.

47. The authorities in North Kivu have adopted interim measures to restrict freedom of movement, including the closure of sites for displaced persons. Although these measures are aimed at improving the security situation after the attacks on civilians in Beni territory, they expose displaced persons to many more risks, including reprisals by local communities or security forces that suspect them of collaborating with the "enemy". Seven sites for displaced persons, including six in Masisi territory, will be affected by the measures, according to information that is still unconfirmed; they currently house 20 per cent of the displaced persons living in sites in North Kivu.[37]

2. Action taken by the United Nations Joint Human Rights Office

48. The protection of civilians remains a central priority of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) and of the United Nations Joint Human Rights Office.[38] The mandate of MONUSCO has been extended to violence committed in the context of elections.[39]

49. During the reporting period, the United Nations Joint Human Rights Office continued its monitoring and investigation activities in the conflict-affected areas. These activities, carried out with other sections of MONUSCO, including its military component,

[37] As of 25 March 2016, 223,613 displaced persons were living in 53 sites in North Kivu (Camp Coordination and Camp Management Cluster).

[38] S/RES/2277(2016), para. 29 (a) and 33.

[39] S/RES/2277(2016), para. 35 (i) (a).

helped to better document the abuses committed and have also facilitated early warning of other abuses through their deterrent effect on some combatants from armed groups.

3. Due diligence with regard to human rights and the role of the United Nations Joint Human Rights Office

50. The reporting period was marked by the application of the new procedure for implementation of the due diligence policy with regard to human rights, adopted on 21 May 2015 by MONUSCO and the country team and managed by a secretariat under the Director of the Office. This procedure focuses in particular on assessing the risk of human rights violations by non-United Nations defence and security forces to which MONUSCO could provide logistical and/or operational support. It reinforces dialogue with the authorities to ensure that these risks are better taken into account in the joint planning of military support, so that appropriate prevention measures are adopted. The risk assessment is carried out with the help of expertise from different units of MONUSCO and United Nations specialized agencies. It helps to place in perspective the risks and benefits of support, in order to calculate the impact on the fulfilment of the Mission's mandate, including the protection of civilians and the fight against impunity.

51. During the reporting period, the Mission identified models for risk mitigation measures, including by means of support to military operations. These measures are being implemented. MONUSCO has sometimes denied support to units or officers when it has found that there was a previous history of serious violations, that the risk of recurrence of such violations was high or that sufficient preventive measures were not taken. The secretariat of the due diligence policy with regard to human rights conducted 272 risk assessments related to requests for support by the Congolese national police and FARDC in relation to 1,301 individuals. Information gathered by the Office as part of its monitoring and investigation functions proved crucial to MONUSCO in terms of its ability to assess and provide support to military operations.

F. Fight against impunity

52. The Human Rights Committee has called on the Government to ensure that all human rights violations brought to its attention are investigated and that those responsible for them are duly punished.[37] During the universal periodic review in 2014, it was recommended that the Government should take measures to combat impunity by adapting national legislation to the Rome Statute and that it should apply a policy of zero tolerance to persons who have committed violations of human rights and of international humanitarian law.

1. Current situation and action taken by the Government

53. Important developments have been observed in the fight against impunity during the reporting period. According to information made available to the United Nations Joint Human Rights Office, at least 246 FARDC soldiers and 78 officers of the Congolese national police were convicted in the Democratic Republic of the Congo for acts constituting human rights violations.[38]

54. For example, on 16 September 2015, the High Military Court upheld the conviction of Colonel Mukalayi for the murder of human rights defender Floribert Chebeya and his driver on 2 June 2010, but reduced his sentence to 15 years' imprisonment. Colonel

[37] CCPR/C/COD/CO/3, para. 10.

[38] These are figures covering the period from June 2015 to April 2016.

Mukalayi was sentenced to pay US$ 50,000 to the families of the victims for pecuniary and non-pecuniary damages and US$ 5,000 to the NGO Voix des Sans Voix. Moreover, the court acquitted four police officers prosecuted in the same case.

55. On 30 October 2015, the military court of Maniema, sitting in Kindu, found senior police superintendent Amuri Mpia Abraham guilty of crimes against humanity, including rape and torture, perpetrated in May 2012 in Dembo (territory of Kibombo, Maniema) by officers of the mobile response unit of the Congolese national police who were under his command. He was sentenced to 10 years' imprisonment. The Office provided financial support for the legal representation of the victims during the trial.

56. On 28 March 2016, the garrison military court of Kinshasa/Gombe started the trial of 14 FARDC soldiers repatriated from United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic and charged with rape, inter alia. This procedure is an encouraging step forward by the judicial authorities in combating impunity for human rights violations. However, it raises particular challenges, including with respect to the distance from locations where the violations were committed. The ongoing procedure is taking place in the absence of the alleged victims, who are participating neither as civil parties, nor as witnesses, something which could jeopardize the right to a fair trial and the granting of remedies to victims. The trial has now been suspended to allow for the identification of victims and their potential participation.

57. The United Nations Joint Human Rights Office, the Justice and Corrections Section of MONUSCO, the United Nations Development Programme, the Expert Group and the International Centre for Transitional Justice assisted in the organization of three events attended by the judicial authorities, during which 17 priority cases of prosecution by military courts were identified in the provinces of Ituri, Tshopo, North Kivu and South Kivu.

58. On the legislative front, the most significant development has been the promulgation on 2 January 2016 by the President of the Republic of legislation on the implementation of the Rome Statute, which Parliament had been expected to adopt in 2008. The text supplements the existing legislative framework by incorporating definitions of international crimes into the Criminal Code, removing incorrect definitions of these crimes in the Military Criminal Code, abolishing immunity for such crimes for officials and other personalities, including the President of the Republic and members of Parliament, and providing that there can be no amnesty for international crimes.

59. Several challenges remain in the fight against impunity and for the administration of justice, however. The rate of prosecution of senior officers remains low due to an inadequate legal framework and certain institutional barriers, including the military operational courts. Problems also persist with regard to the independence of the judiciary and the prison system. These challenges were identified and discussed at a forum on the justice system in 2015, but the resulting recommendations have yet to be applied.

60. The right to appeal the decisions of military courts in accordance with the Judicial Code does not apply to the military operational courts,[7] whose decisions are those of both upper and lower courts, in flagrant disregard for the right to a fair trial and fundamental safeguards such as the right of appeal, even though these are recognized in the Constitution.

61. The independence of the judiciary remains a major concern. By way of illustration, with certain exceptions, military judges cannot prosecute or adjudicate cases against military officers who outrank them, which reduces the chances that high-ranking military

[7] Arts. 87 and 276 of the Judicial Code (Act No. 023/2002 of 18 November 2002). Article 87 provides that "the rulings handed down by the military operational courts are not subject to any remedy."

officers will be brought to trial. Furthermore, the lack of human and financial resources exposes the judiciary to the risk of money changing hands for certain acts and is not conducive to judicial independence. This institutional fragility opens the door to interference in the judiciary, often seen as a tool for muzzling political opposition, civil society and the media, particularly in the current electoral context, when violations of rights and fundamental freedoms are increasing. Such is the case for members of the above-mentioned LUCHA movement, who have frequently been subjected to judicial proceedings since March 2015.

62. Weaknesses in the prison system constitute another major obstacle to combating impunity: mass escapes are frequent because of negligence and the corruption of guards and are facilitated by dilapidated infrastructure. During the reporting period, at least 1,044 individuals escaped from prisons throughout the country.

63. It is regrettable that, despite the enactment of laws on the implementation of the Rome Statute of the International Criminal Court,[7] the death penalty still exists under domestic legislation, including for international crimes. Despite the fact that a moratorium has been observed since 2003, the death penalty continues to be imposed by civilian and military courts.

2. Action taken by the United Nations Joint Human Rights Office

64. The Office has continued to assist the judicial authorities in the fight against impunity by providing technical and logistical support to investigators and judges deployed to areas where human rights violations have been committed and to which access is difficult. Support was provided by the Office for 13 joint investigation missions and to 22 itinerant courts in cases involving human rights violations, 12 of which concerned sexual violence. The proceedings resulted in 74 convictions. In the case concerning an attack on the village of Yalisika (Equateur) by members of FARDC and the Congolese national police, during which human rights violations were committed against the inhabitants, the Military Court of Equateur received logistical and technical support from the Office after receiving a complaint about theft by the logging company SIFORCO. From 5 June to 14 December 2015, the Office also provided assistance to victims and witnesses in Mbandaka.

65. From 15 to 16 March 2016, the Office and the International Center for Transitional Justice organized a conference on regional judicial cooperation in combating impunity for international crimes in the Great Lakes region. This event was attended by civilian and military judges as well as experts from the Democratic Republic of the Congo, Uganda, Rwanda and Tanzania. The conference was organized to examine the procedures that could be applied to requests for mutual legal assistance and extradition and to establish liaison among the national authorities involved in these procedures.

III. Cooperation with United Nations human rights mechanisms and national mechanisms to promote and protect human rights

A. Action to implement universal periodic review recommendations

66. With support from the United Nations Joint Human Rights Office and with the collaboration of civil society, the Government continued to carry out activities and to

[7] The Democratic Republic of the Congo ratified the Rome Statute on 11 April 2002.

undertake measures in the course of implementing the recommendations that emerged from the second universal periodic review cycle in May 2014. On 21 December 2015, during a press briefing, the Minister of Justice and Human Rights announced a public outreach campaign concerning the plan for carrying out the recommendations and commitments arising from the universal periodic review. On 17 December 2015, he asked the Prime Minister to request the ministers affected by the various recommendations to ensure their implementation.

67. Following the ratification, in September 2015, of the Convention on the Rights of Persons with Disabilities, the Ministry for Social Affairs, Humanitarian Action and National Solidarity, in collaboration with the Ministry of Public Health and with technical support from the United Nations Joint Human Rights Office, organized two workshops for members of the steering committee in charge of the organization of the forum on the situation of persons with disabilities, in September and November 2015. These workshops focused on the collection of data on the situation of persons with disabilities and on the rights of persons with disabilities. On 20 and 21 May 2016, a five-year plan (2016-2021) for the promotion and protection of the rights of persons with disabilities was adopted during a workshop organized by the Ministry of Social Affairs, Humanitarian Action and National Solidarity with the collaboration of the national fund for promotional efforts and social services.

68. In July and August 2015, with technical and financial support from the United Nations Joint Human Rights Office, the interministerial Committee on Human Rights, which works within the Ministry of Justice and Human Rights, undertook missions in the eastern provinces and in Kinshasa in order to collect data on the situation with regard to torture for inclusion in the second periodic report to the Committee against Torture.

B. Update on national mechanisms for the protection and promotion of human rights

1. National Human Rights Commission

69. Following the approval by the Constitutional Court of the rules of procedure of the National Human Rights Commission, the members of the Commission were sworn in by the Court on 23 July 2015, officially instituting the Commission. Members of its staff, including 10 provincial coordinators, were subsequently recruited. A permanent headquarters is to be assigned to it.

70. In April and May 2016, with technical support from United Nations Joint Human Rights Office and the headquarters of the Office of the High Commissioner for Human Rights, as well as financing from the Republic of Korea, the Commission undertook a series of national consultations in the course of developing a strategic plan.

71. Under its protection mandate, the Commission has carried out two monitoring missions with support from the United Nations Joint Human Rights Office, including an investigation into the problem of LUCHA in Goma. It has also engaged in other protection activities such as the consideration of complaints, investigations into alleged violations of human rights in Kinshasa and in the provinces, visits to places of detention and observation of the trials of human rights defenders.

72. Because the Commission has not yet been accredited, it cannot attend sessions of the Human Rights Council. Nevertheless, in October 2015, with support from the United Nations Joint Human Rights Office, the Vice-Chair and Rapporteur of the Commission undertook a mission to Geneva in the context of cooperation with international human rights mechanisms. From 21 to 23 March 2016, in collaboration with the Office of the High

Commissioner for Human Rights, the United Nations Joint Human Rights Office facilitated the participation of the Rapporteur of the Commission in the twenty-ninth session of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, held in Geneva.

2. Other national mechanisms

73. Considerable efforts are needed to make the human rights liaison bodies operational and effective. The Ministry of Justice and Human Rights has undertaken to reactivate the national human rights liaison institution in 2016, including by appointing six new members of its permanent secretariat. However, by the time this report was drafted, no significant change in the secretariat had been observed. The same holds true for provincial and local institutions.

74. The unit for the protection of human rights defenders, established by ministerial order in 2011 within the General Secretariat of the Ministry of Justice and Human Rights, is still not operational, having not received budgetary resources.

IV. Conclusions and recommendations

A. Conclusions

75. During the reporting period, the human rights situation was marked by a gradual shrinkage of the democratic space, together with a steady increase in attacks on fundamental freedoms. The intervention of State agents in suppressing political opponents and other civil society actors — including through the excessive use of force against demonstrators, arbitrary arrests and incommunicado detentions without judicial supervision, threats and other intimidation — is particularly worrying with the approach of an important electoral period. In the eastern part of the country, the conflict continues to have a heavy impact on the human rights situation.

76. Some encouraging progress has been seen, particularly in the legislative arena, in the fight against impunity. Nevertheless, structural problems in the judiciary, particularly its lack of independence when dealing with cases against political opponents and civil society actors and cases involving high-ranking officials, have engendered a low rate of prosecution for human rights violations.

B. Recommendations

77. **The High Commissioner hereby recommends to the Government of the Democratic Republic of the Congo:**

(a) To guarantee the protection of the fundamental freedoms of all persons, including political opponents, journalists and other civil society actors; and to ensure that any restrictions on these freedoms comply with the principles of legality, necessity and proportionality;

(b) To ensure that effective impartial, independent and prompt investigations are carried out, that those responsible for violations or abuses of human rights are systematically brought before the courts and that the victims, including victims in cases of sexual violence, receive due reparation without delay;

(c) To set up judicial mechanisms and possibly other transitional justice mechanisms to combat impunity regarding violations or past and present abuses; and

to enable the judicial system, both civilian and military, to function independently, without any interference;

(d) To speed up the implementation of the recommendations of the final report from the justice forum, particularly those related to the reform of the judicial and security sectors and the fight against impunity;

(e) To adopt the bill on the protection of human rights defenders; and to enact the law establishing measures for ensuring freedom of demonstration, in accordance with international standards, including the principle of non-discrimination;

(f) To improve and increase the participation of women in the political sphere, including by the adoption of special temporary measures;

(g) To continue its efforts to implement the plan of action concerning FARDC, aimed at eliminating and preventing the recruitment of children and sexual abuse;

(h) To establish a national mechanism for the prevention of torture, in accordance with the Optional Protocol to the Convention against Torture;

(i) To ensure that the National Human Rights Commission becomes fully operational, including by allocating to it the necessary financial and material resources and by guaranteeing its independence, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles);

(j) To strengthen the national institutions and mechanisms in charge of the coordination and monitoring of implementation of the recommendations of the United Nations human rights mechanisms;

(k) To strengthen its collaboration with the United Nations Joint Human Rights Office, MONUSCO and other partners, in order to improve the protection of human rights in the country.